

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Overton's Inc.)
111 Red Banks Road)
Greenville, NC 27858)
)
Respondent.)
_____)

ORDER RELATING TO OVERTON'S INC.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has notified Overton's Inc. ("Overton's") of its intention to initiate an administrative proceeding against Overton's pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) ("Regulations"),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),² by issuing a proposed charging letter to Overton's that alleged that Overton's committed 22 violations of the Regulations. Specifically, the charges are:

¹ The violations charged occurred from 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 - 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

1. *22 Violations of 15 C.F.R. § 764.2(a) - Export of Optical Sighting Devices without the Required License:* From on or about September 20, 2000 through on or about January 16, 2002, Overton's engaged in conduct prohibited by the Regulations by exporting optical sighting devices (ECCN³ 0A987), choke tubes (ECCN 0A984), and related equipment, items subject to the Regulations, to Canada, without the Department of Commerce licenses required by Section 742.17 of the Regulations.

WHEREAS, BIS and Overton's have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$6,600 is assessed against Overton's, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein,

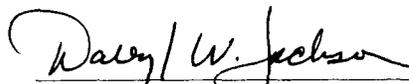
³The term "ECCN" refers to an Export Control Classification Number. *See* Section 772.1 of the Regulations.

Overton's will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Overton's. Accordingly, if Overton's should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Overton's export privileges under the Regulations for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 24th day of October 2005.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Overton's Inc.)
111 Red Banks Road)
Greenville, NC 27858)
)
Respondent.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, Overton's Inc. ("Overton's"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2005)) ("Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),²

¹ The violations charged occurred from 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 - 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations govern the procedural aspects of this case.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

WHEREAS, BIS has notified Overton's of its intention to initiate an administrative proceeding against Overton's, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Overton's that alleged that Overton's committed 22 violations of the Regulations, specifically:

1. *22 Violations of 15 C.F.R. § 764.2(a) - Export of Optical Sighting Devices Without the Required License:* From on or about September 20, 2000 through on or about January 16, 2002, Overton's engaged in conduct prohibited by the Regulations by exporting optical sighting devices (ECCN³ 0A987), choke tubes (ECCN 0A984), and related equipment, items subject to the Regulations, to Canada, without the Department of Commerce licenses required by Section 742.17 of the Regulations.

WHEREAS, Overton's has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Overton's fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, Overton's enters into this Agreement voluntarily and with full knowledge of its rights;

³The term "ECCN" refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

WHEREAS, Overton's states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Overton's neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Overton's wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Overton's agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

BIS has jurisdiction over Overton's, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Overton's in complete settlement of the violations of the Regulations relating to the transactions detailed in the proposed charging letter:

- a. Overton's shall be assessed a civil penalty in the amount of \$6,600, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment shall be made in the manner specified in the attached instructions.
- b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, License Exception, permission, or privilege granted, or to be granted, to Overton's. Failure to make timely payment of the civil penalty set forth above may result in

the denial of all of Overton's export privileges under the Regulations for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Overton's hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$6,600 civil penalty, BIS will not initiate any further administrative proceeding against Overton's in connection with any violation of the Act or the Regulations arising out of the transactions detailed in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

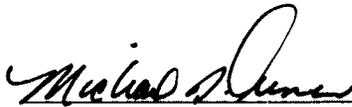
No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

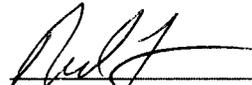
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY,
U.S. DEPARTMENT OF COMMERCE

OVERTON'S, INC.



Michael D. Turner
Director
Office of Export Enforcement



Mark Metcalfe
President

Date: 10/17/05

Date: 9/26/05

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Overton's Inc.
111 Red Banks Road
Greenville, NC 27858

Attention: *Mr. Mark Metcalfe*
President

Dear Mr. Metcalfe:

The Bureau of Industry and Security, U. S. Department of Commerce ("BIS"), has reason to believe that Overton's, Inc. ("Overton's"), of Greenville, North Carolina, has committed 22 violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Overton's committed the following violations:

Charges 1 - 22 15 C.F.R. § 764.2(a): Exporting Optical Sighting Devices Without the Required Licenses:

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on twenty-two occasions, from on or about September 20, 2000 through on or about January 16, 2002, Overton's engaged in conduct prohibited by the Regulations by exporting

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2005). The violations charged occurred from 2000 through 2002. The Regulations governing the violations at issue are found in the 2000 - 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2005 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 2, 2005 (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

optical sighting devices (ECCN³ 0A987), choke tubes (ECCN 0A984), and related equipment, items subject to the Regulations, to Canada, without the Department of Commerce licenses required by Section 742.17 of the Regulations. In so doing, Overton's committed twenty-two violations of Section 764.2(a) of the Regulations.

* * * *

Accordingly, Overton's is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Overton's fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Overton's defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Overton's. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for each of the charges in this letter.

Overton's is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Overton's is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Overton's have a proposal to settle this case, Overton's or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the

³The term "ECCN" refers to an Export Control Classification Number. *See* Section 772.1 of the Regulations.

⁴ *See* 15 C.F.R. § 6.4(a)(2).

Overton's, Inc.
Proposed Charging Letter
Page 3

matters set forth in this letter. Accordingly, Overton's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Overton's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: James C. Pelletier, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

James C. Pelletier is the attorney representing BIS in this case; any communications that Overton's may wish to have concerning this matter should occur through him. Mr. Pelletier may be contacted by telephone at (202) 482-5301.

Sincerely,

Michael D. Turner
Director
Office of Export Enforcement

SCHEDULE A

OVERTON'S, INC.

CHARGE	EXPORT DATE	COMMODITY	ECCN	RPS/ FEDEX TRACKING NO.	DESTINATION	VALUE (IN USD)
1	9/20/00	Herter's RUEB Shotgun Sight Over&Und, #8434	0A987	027842370028478	Canada	9.99
2	10/23/00	Herter's RUEB Shotgun Sight, #5433	0A987	027842370029819	Canada	9.99
3	12/21/00	Herter's Riflescope 3-9X40 8 Point, #50060	0A987	027842370032444	Canada	31.99
4	7/27/01	Herter's RUEB Shotgun Sight for Vented, #5433	0A987	0278423700452460027	Canada	10.99
5	8/20/01	Herter's RUEB Shotgun Sight for Vented, #5433	0A987	0278423700472260006	Canada	10.99

CHARGE	EXPORT DATE	COMMODITY	ECCN	RPS/ FEDEX TRACKING NO.	DESTINATION	VALUE (IN USD)
6	8/27/01	<ul style="list-style-type: none"> • Herter's Choke Tube-Ber/Ben 12 GA 1, #404601 • Herter's Choke Tube- Ber/Ben 12 GA 2, #404602 • Herter's Choke Tube- Ber/Ben 12 GA 3, #404603 • Herter's Choke Tube- Ber/Ben 12 GA 4, #404604 	0A984	027842370047806004	Canada	171.96
7	8/22/01	Herter's HIVIZ Shotgun Sight for Narrow, #4260	0A987	0278423700475090002	Canada	19.99
8	9/6/01	Herter's RUEB Shotgun Sight Straight Single Barrel, #5432	0A987	0278423700490220010	Canada	10.99
9	9/11/01	Herter's HIVIZ Shotgun Sight for Narrow, #4260	0A987	0278423700494280002	Canada	19.99
10	9/14/01	Herter's Slug Series Remington (2), #50082	0A987	027842370049893002	Canada	39.98
11	9/21/01	Herter's Patternmaster Mossberg 835 12GA (choke tube), #56738	0A984	0278423700504170002	Canada	84.99
12	9/25/01	Herter's HIVIZ Shotgun Sight for Narrow Vent Rubs (2), #4260	0A987	0278423700507070008	Canada	39.98

CHARGE	EXPORT DATE	COMMODITY	ECCN	RPS/ FEDEX TRACKING NO.	DESTINATION	VALUE (IN USD)
13	9/26/01	Herter's RUEB Sight for Vented for Single Barrel, #5433	0A987	027842370050544	Canada	10.99
14	10/18/01	Herter's HIVIZ Shotgun Sight for Wide V (2), #4261	0A987	0278423700516430002	Canada	39.98
15	10/26/01	<ul style="list-style-type: none"> • Herter's RUEB Shotgun Sight Straight Single Barrel, #5432 • Herter's RUEB Shotgun Sight for Vented Single Barrel, #5433 	0A987	0278423700519230002	Canada	21.98
16	10/31/01	Herter's RUEB Shotgun Sight for Vented Single Barrel, #5433	0A987	0278423700522130007	Canada	10.99
17	12/7/01	Herter's RUEB Shotgun Sight Straight, #5432	0A987	0278423700538690002	Canada	10.99
18	12/11/01	<ul style="list-style-type: none"> • Dunn's Ported Choke Win/Invect, #86591CY • HIVIZ Shotgun Sight for Narrow, #4260 • Herter's Ported Choke Win/Invect, #86591LM 	<ul style="list-style-type: none"> •0A984 •0A987 •0A984 	0278423700539990016	Canada	119.97

CHARGE	EXPORT DATE	COMMODITY	ECCN	RPS/ FEDEX TRACKING NO.	DESTINATION	VALUE (IN USD)
19	12/20/01	<ul style="list-style-type: none"> • Herter's RUEB Shotgun Sight Straight, #5432 • Herter's RUEB Shotgun Sight Vented, #5433 	0A987	0278423700543470001	Canada	21.98
20	12/26/01	Herter's RUEB Shotgun Sight for Vented, #5433	0A987	0278423700544150009	Canada	10.99
21	1/18/02	Dunn's Xtended Choke Inv+/BROW, #86586SP	0A984	0278423700551770001	Canada	29.99
22	1/16/02	<ul style="list-style-type: none"> • Dunn's Xtended Choke Inv+/Brow, #86586SP • Dunn's HIVIZ Shotgun Sight for Narrow, #4260 	<ul style="list-style-type: none"> •0A984 •0A987 	0278423700551910004	Canada	48.99